

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

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|--|---|---------------------------|
| Franklin A. Benjamin, # 245407, |) | C.A. No. 9:08-3134-TLW-BM |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | ORDER |
| |) | |
| State of South Carolina; Henry McMaster, |) | |
| Attorney General of the State of South Carolina; |) | |
| and Warden, Lee Correctional Institution; |) | |
| |) | |
| Respondents. |) | |
| <hr style="width: 40%; margin-left: 0;"/> |) | |

This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Bristow Marchant, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge Marchant recommends that the § 2254 petition in the above-captioned case be dismissed without prejudice as a successive § 2254 petition under Rule 9 of the Section 2254 Rules, without requiring the respondents to file a return. (Doc. # 8). The Report was filed on October 29, 2008. No objections to the Report have been filed.

This Court is charged with conducting a de novo review of any portion of the Magistrate Judge’s Report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th

Cir. 1983).

A review of the record indicates that the Report accurately summarizes this case and the applicable law. For the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that the Magistrate Judge's Report is **ACCEPTED** (Doc. # 8), and the § 2254 petition in the above-captioned case is dismissed without prejudice as a successive § 2254 petition under Rule 9 of the Section 2254 Rules. Respondents are not required to file a return.

IT IS SO ORDERED.

s/ Terry L. Wooten

TERRY L. WOOTEN

UNITED STATES DISTRICT JUDGE

December 2, 2008
Florence, South Carolina